IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.6.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.715 of 2006

Dr.Subbiah .. Petitioner

vs.

Sakthi Finance Ltd.
Rep., by its Divisional
Manager, 29/30 Dr.Radhakrishnan
Salai, Mylapore, Chennai.4. .. Respondent

Revision Petition filed against the order dated 17.3.2006, made in I.A.No.3846/2006 in I.A.No.1564/2005, in O.S.No.9171/1996 on the file of the XV Assistant Judge, City Civil Court Madras.

For Petitioner : Mr.R.Thyagarajan

ORDER:

This Revision Petition has been filed against the order made in I.A.No.3846/2006 in O.S.No.9171/1996, dated 17.3.2006, on the file of the learned XV Assistant City Civil Judge, Chennai.

2. I.A.No.3846/2006 has been filed by the Revision Petitioner who is second defendant in O.S.No.9171/1996, under Sec.94(e) read with Sec.151 of C.P.C., praying for an interim direction restraining the respondent/plaintiff herein from executing the decree passed in O.S.No.9171/1996, dated 28.7.1998, pending disposal of the I.A.Nos.1563 and 1564 of 2005 in the above suit.

3. I.A.No.1563/2005 has been filed by the Revision Petitioner herein under Order 9, Rule 13 of C.P.C., to set aside the ex parte decree dated 28.7.1998 in O.S.No.9171/1996 and I.A.No.1564/2005 was filed by the Revision Petitioner herein under Sec.5 of the Limitation Act to condone the delay of 2174 days in seeking to set aside the exparte decree dated 28.7.1998.

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4. In I.A.No.3846/2006, the Revision Petitioner has stated that he was a victim of fraud and the very liability forming the subject matter of the suit was seriously disputed by him. He further averred in I.A.No.3846/2006 that the claim preferred against him by the plaintiff is vitiated by fraud and there is no valid decree on merits. In such circumstances and in the interest of equity, justice, good conscience and fair play, he prayed for an injunction to restrain the respondent/plaintiff from executing the decree in O.S.No.9171/1996. By order dated 17.3.2006, I.A.No.3846/2006 was dismissed and challenging that order, the above Civil Revision Petition has been filed.

5. Heard the learned counsel for the petitioner and I have perused the documents filed in support of his submissions.

6. The trial court dismissed I.A.No.3846/2006 on the ground that a similar petition was already filed and the same was dismissed on 10.8.2005 and this order dated 10.8.2005 was suppressed by the petitioner herein. The court below further referred to the fact that the Revision Petitioner filed an application in E.A.No.3876/2002 under Sec.47 of C.P.C. before the execution court and the same was also dismissed. The learned Judge also considered the fact that a conditional order was passed by the execution court in E.P.No.169/2004, staying the order of arrest on payment of Rs.25,000/- and this condition was not complied with by the Revision Petitioner. Considering all these facts, the application was dismissed by the trial court.

7. It is true that already an application in I.A.No.4070/2005 was filed by the Revision Petitioner to grant stay of the decree dated 28.7.1998 in E.P.No.169/2004 and this application was dismissed by the trial court on 10.8.2005. Challenging this order dated 10.8.2005, no appeal nor any revision has been filed and this order reached its finality. In such circumstances, the court below is right in holding that I.A.No.3846/2006 praying to restrain the respondent/plaintiff from executing the decree in O.S.No.9171/1996 is hit by the doctrine of res judicata. By merely altering the words of the prayer, the Revision Petitioner herein is not to be permitted to re-agitate the same issue in the same proceedings. Further, the conduct of Revision Petitioner is also to be noted against him for the reason that he suppressed the fact that I.A.No.4070/2005 to stay the execution of the decree in O.S.No.9171/1996 has already dismissed in the affidavit filed in support of I.A.No.3846/2006. He has already filed

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an application under Sec.47 of C.P.C., in the Execution Petition and the same was also dismissed. Even the conditional order passed in E.P.No.169/2004 was also not complied with and in such circumstances I do not approve of the conduct of the Revision Petitioner herein in filing one application after another for the same relief by suppressing the earlier applications. Therefore, I am in entire agreement with the reasons given by the court below in rejecting I.A.No.3846/2006 and I find no illegality nor infirmity in the order passed to be interfered with by this court under its revisional jurisdiction.

7. Accordingly, the Civil Revision Petition fails and the same is dismissed as devoid of merits. No costs. C.M.P.No.6033/2006 is also dismissed.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar, City Civil Court, Chennai.104

2. The XV Assistant Judge
City Civil Court
Madras.

SGL(CO)
NM(26.06.2006)

C.R.P.(NPD)715/06.

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